Your Exit Strategy

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Many of us are familiar with the Terri Shaivo incident which involved a disagreement between Terri's parents and her husband regarding Terri's removal from life support. Since Terri never put anything in writing to indicate her wishes, the family argued over her intent or wishes.

In April 2006, we experienced a situation similar in southwest Michigan to the Terri Shaivo matter. 97 year old Hazel Wagner was in the hospital suffering from kidney failure, recovering from a heart attack and was being kept alive by a feeding tube and a ventilator. Because Ms. Wagner had no family and had never put anything in writing regarding life support, the treating physician for Ms. Wagner petitioned the court to be appointed as her guardian and requested permission to remove her from the feeding tube and be placed in "respite care". Although many of us would think that this would be a fair request by the doctor, the court ultimately decided otherwise. Despite the doctor's testimony that the 97 year old patient had almost no chance of meaningful recovery, the court decided that the job of the treating physician was to advise and not to advocate. Since Ms. Wagner did not have anything in writing and had no immediate family to make these decisions for her, she was left on life support. The court humbly recognized that neither law, medicine nor philosophy can always provide a satisfactory answer to the question of whether or not we accept or reject life sustaining treatment. We have to make our wishes known in writing.

The court did recognize that to err either way has incalculable ramifications, whether to end the life of a patient who still derives meaning and enjoyment from life or to condemn persons to lives from which they cry out for release is nothing short of barbaric. If we are to err, however, we must err in preserving life**.** This was the decision in a Michigan case in 1995. Although the court did appoint a guardian for Ms. Wagner, the court also recognized that under Michigan law a guardian merely has the power to give consent or approval necessary to enable the patient to receive medical or other professional care, counsel, treatment or service and/or to secure services to restore the patient to the best possible state of mental and physical well-being so that the patient can return to self-management at the earliest possible time. Although the broad language of the Michigan statute regarding the appointment of a guardian would appear to allow that guardian to consent to most any medical care, the laws of Michigan ultimately hold that it is the job of the guardian to return the patient to self management. The court felt that the withdrawal of a feeding tube and breathing tube is not compatible with the job granted to a guardian...TO RETURN THE PATIENT TO SELF MANAGEMENT.

The court stated that in order for a "patient advocate" to be allowed to make medical decisions for another, specifically decisions regarding the right to withdraw the patient from life support and/or to withdraw treatment that would allow the patient to die, the patient must have expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision and the patient is aware that such a decision could or would result in the patient's death.

The court made it very clear in it's decision that since competent individuals have every right to fully express their wishes with regard to the removal of life sustaining treatment and/or authorize a patient advocate to make these decisions for the patient, that this right is a personal decision that cannot be made by another, such as the court or a court appointed guardian.

In fact, the court found that with regard to Ms. Hazel Wagner, it would be unfair for a guardian who has **not** known Ms. Wagner prior to the incident to be thrown into a position of making quality of life decisions for her. In fact, the court held that if a person was competent and did not make their wishes known in writing, a surrogate decision maker cannot now make that decision once the individual is incapacitated. In the absence of clear and convincing evidence of the incapacitated individuals pre-injury statement expressing their decision to refuse life sustaining medical treatment under the present circumstances, courts will not authorize the removal of life sustaining medical treatment. (In Re Martin 450 Mich 204, 1995) Clearly, this is confirmation of the importance of putting your wishes in writing while you are conscious, capacitated and of sound mind.